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MICHAEL C. CESARANO
SUNTRUST INTERNATIONAL CENTER, 28TH FLOOR
1 S.E. 3RD AVENUE
MIAMI FL 33131-1714

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OFFICE OF PETITIONS

In re Application of :
Aziz Rassi Neto :
Application No. 10/022,313 : DECISION ON PETITION
Filed: 17 December, 2001 :
Atty Docket No. 162321 :

This is a decision on the petition filed on 7 November, 2005, under 37 CFR 1.137(b),¹ to revive the above-identified application.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition is GRANTED.

The application became abandoned on 1 July, 2005, for failure to timely reply to the non-final Office action mailed on 31 March, 2005, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$510.00 extension of time fee submitted on 7 November, 2005, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and has been credited to petitioner's deposit account, No. 50-0951.

This application is being referred to Technology Center Art Unit 3731 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions